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The further question arises as to whether the provision of the Carmack Amendment to the Interstate Commerce Act<sup>19</sup> has the effect of changing the rule laid down in the Hart case.<sup>20</sup> The cases hold very generally, however, that the Carmack Amendment does not deprive the carrier of the right to make a fair contract with the shipper, fixing an agreed valuation upon the goods to be transported.<sup>21</sup>

G. W. K.

CORPORATIONS—POWER TO ACT AS ACCOMMODATING INDORSER—In Pennsylvania, for the first time, the precise question whether a corporation will be liable on its endorsement of a promissory note when such endorsement was for accommodation, and the paper passes into the hands of a *bona fide* purchaser for value before maturity without notice of the character of the endorsement, has been passed on by the Supreme Court, and decided in the affirmative. The Court took the position that a corporation having either express or implied power to issue negotiable paper is presumed to act within the scope of that authority and that therefore there was nothing to put the holder on notice that the endorsement was irregular, and consequently he is entitled to recover.<sup>1</sup>

The first question to be considered is when the power to issue negotiable paper may be implied, and on this point there is an interesting difference of judicial opinion between the courts of England and those of the United States, the latter being far more lenient. In England a corporation has not, as one of the mere incidents of its existence, the power to make notes, accept bills of exchange, *etc.* The rule is that unless the nature of the business in which a corporation is engaged raises a necessary implication of the existence of such a power, it does not exist, and it seems that a corporation whose business does not require the issuing of negotiable paper under ordinary circumstances has no implied authority to issue such a paper under any circumstances whatever. The reason for the rule as stated by Chief Justice Erle in *Bateman v. Mid Wales Railway Company*<sup>2</sup> is this: "The bill of exchange is a cause of action by itself, which binds the acceptor in the hands of any endorsee for value; and I conceive it would be altogether contrary to the principles of the law which regulates such instruments that they should be valid or invalid according as the original consideration between the parties was good or bad,—or whether in the case of a corporation,

<sup>19</sup> Act of Feb. 4, 1887, c. 104, §20, 24 Stat. 386, U. S. Comp. St. 1901, as amended by Act of June 29, 1906, c. 3591, §7, 34 Stat. 593, U. S. Comp. St. Supp. 1911.

<sup>20</sup> Hart v. Penna. R. R., *supra*, n. 11.

<sup>21</sup> Albert Bernard v. Adams Express Co., 205 Mass. 254 (1910); Adams Express Co. v. Croninger, 226 U. S. 491 (1912).

<sup>1</sup> Cox and Sons Co. v. Northampton Banking Co., 245 Pa. 418 (1914).

<sup>2</sup> L. R. 1 C. P. 499 (Eng. 1866).

the consideration in respect of which the acceptance is given is sufficiently connected with the purposes for which the acceptors are incorporated. Some bills might be given for a consideration which was valid, as work done for the company, and others as a security for money obtained on a loan beyond their borrowing powers. It would be a precarious thing to hold that, in respect of the former, the corporation might be sued by the endorsee, in the latter, not." This ground appears somewhat narrow and technical but the sentiment of the English courts has apparently been that it was necessary to draw the line somewhere and that this was a convenient place. Accordingly it has been held in England that the right to issue negotiable paper cannot be implied from the business of a railway company,<sup>3</sup> a gas company,<sup>4</sup> or a water works company,<sup>5</sup> but such a power has been allowed a financial company.<sup>6</sup> The English Companies Act, 1862, however, left any company formed under its provisions at liberty to assume the power to issue negotiable paper in its memorandum or articles of association.<sup>7</sup> In the United States, as noted above, the courts are far more prone to imply this power than in England, the theory being that the issuing of negotiable paper is merely a means of accomplishing the chartered purposes of a corporation. The power has been implied from that of borrowing money,<sup>8</sup> acquiring property,<sup>9</sup> or from that of making contracts generally.<sup>10</sup> This broad ground is that every corporation has the power, even though not expressly granted, of making contracts to effectuate any of the purposes of its creation, and that the power to contract inevitably involves the power to create a debt, which in turn gives rise to the power to issue negotiable paper. Although technically this appears somewhat less accurate than the English theory, it is submitted that it is calculated in a much greater degree to effectuate the purposes for which corporations are formed. Accordingly the courts of the various states have held that railroad,<sup>11</sup> mining,<sup>12</sup> and manufacturing corporations<sup>13</sup> of any description may issue negotiable paper without having the power to do so expressly granted in their charters.

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<sup>3</sup> *Bateman v. Mid-Wales Ry. Co.*, *supra*, n. 2.

<sup>4</sup> *Bramah v. Roberts*, 3 Bing. N. C. 963 (Eng. 1837).

<sup>5</sup> *Neale v. Turtton*, 4 Bing. 149 (Eng. 1827); *Broughton v. Manchester Water Works Co.*, 3 Barn. & Adol. 1 (Eng. 1819).

<sup>6</sup> *In re Land Credit Company of Ireland*, L. R. 4 Ch. 460 (Eng. 1869).

<sup>7</sup> *Peruvian Railways Co. v. Thames and Mersey Marine Insurance Co.*, L. R. 2 Ch. 617 (Eng. 1867).

<sup>8</sup> *Richards v. Merrimack & Connecticut River R. R. Co.*, 44 N. H. 127 (1862).

<sup>9</sup> *Meade v. Keeler*, 24 Barb. 20 (N. Y. 1857).

<sup>10</sup> *Watt's Appeal*, 78 Pa. St. 370 (1875).

<sup>11</sup> *Lucas v. Pitney*, 27 N. J. L. 221 (1858); *R. R. Co. v. Howard*, 7 Wall. 412 (U. S. 1868).

<sup>12</sup> *Mees v. Rossie Lead Mining Co.*, 5 Hill 137 (N. Y. 1843).

The next question to be considered is whether a corporation can be bound by its signature on the note of another person for the accommodation of the latter. Subject to the exceptions mentioned *infra*, the rule is well established that the corporation is not bound, and the reason is that the directors are authorized by the stockholders to do business for corporate purposes, but are not authorized to use the corporation to perform acts of friendship for others. Accordingly the general rule is that the accommodation endorsement, signature or guaranty of a corporation is illegal and cannot be enforced.<sup>14</sup> But, in accord with the principal case an exception is made in the case of *bona fide* holders,<sup>15</sup> provided that the corporation in question had the power, express or implied, to issue negotiable notes. The reason as stated by Judge Hoar of the Supreme Judicial Court of Massachusetts<sup>16</sup> follows: "The doctrine of *ultra vires* has been carried much farther in England than the courts of this country have been disposed to extend it, but with just limitations, the principle cannot be questioned, that the limitations to the authority, powers and liability of a corporation are to be found in the act creating it. And it no doubt follows that when powers are conferred and defined by statute, everyone dealing with the corporation is presumed to know the extent of those powers. But when the transaction is not the exercise of a power not conferred on a corporation, but the abuse of a general power in a particular instance, the abuse not being known to the other party, the doctrine of *ultra vires* does not apply."<sup>17</sup> But if the note were given by a corporation which was prohibited by its charter from so doing, or by one in which the power to give notes could not be implied, it would be void in the hands of the payee and all subsequent holders because all persons dealing with a corporation are bound to take notice of its chartered powers.<sup>17</sup>

It is interesting to note that notwithstanding the general rule on the subject, which is in accord with that laid down in the principal case, there is no rule of public policy which prohibits an accommodation endorsement of commercial paper by a corporation. Consequently, if such an endorsement is made with the knowledge and consent of all the directors and stockholders, and creditors' rights are not affected, the endorsement is valid and enforceable.<sup>18</sup>

J. W. L.

<sup>14</sup> *Monument National Bank v. Globe Works*, 101 Mass. 57 (1869); *cf. Timberlake v. Order of Golden Cross*, 208 Mass. 422 (1911).

<sup>15</sup> 3 *Cook on Corporations* (6th Ed.) 2683; *Culver v. Reno Real Estate Co.*, 91 Pa. 367 (1879); *Park Hotel Co. v. Fourth National Bank*, 86 Fed. Rep. 742 (1898).

<sup>16</sup> *Bird v. Daggett*, 97 Mass. 494 (1867); *National Bank of Commerce v. Sancho Packing Co.*, 186 Fed. Rep. 260 (1911).

<sup>17</sup> *Monument National Bank v. Globe Works*, *supra*, n. 13.

<sup>18</sup> *Elliott Nat. Bank v. Western, etc.*, R. Co., 2 Lea 676 (Tenn. 1879).

<sup>19</sup> *Murphy v. Arkansas, etc., Co.*, 97 Fed. Rep. 723 (1899); *Martin v. Niagara, etc., Co.*, 122 N. Y. 165 (1890); *cf. Goss & Co. v. Goss*, 147 App. Div. 698 (N. Y. 1911).